

does your husband or boyfriend beat you?



Native Women's Association of the N.W.T.

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POLARPAM

How You Can Use the Law to Protect Yourself

You will need a lawyer if:

- * You are planning to file for divorce and get a restraining order.

- * You are not sure about what you want to do.

If you cannot afford a lawyer...

Legal Aid will assist you in getting a lawyer. In Tallahassee go to the Legal Aid Office (Free Shop at the Courthouse) or telephone (915-9433). In a "Victim Action Community" go to your Native Courtworker.

Legal Aid will provide you with a lawyer if:

- * You do not have enough money to hire one and

- * You need a divorce and a restraining order to protect yourself.

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What can you do if your husband or boyfriend is beating or threatening you?

This handout will give you some idea of what laws can help you and what may happen if you take action. Only you can decide to take action to stop the beatings.

Some of the laws are not all that great, and the law (even the police) will not always be on your side. Your family and friends are important for support — so is your own strength.

Legal Help

When do I need a lawyer and when can I do things myself?

You will not need a lawyer if. . .

- You or the RCMP charge your husband or boyfriend with assault (“lay an information” which means go to the police and tell what happened).
- You or the police “lay an information” against your husband or boyfriend for a peace bond.

In both situations, the Crown Prosecutor (the lawyer working for the Federal Government) will be your lawyer in court. If you feel nervous or afraid about going to “lay an information” yourself, ask a friend or Native Courtworker to go with you to the RCMP.

You will need a lawyer if. . .

- You are planning to file for divorce and get a restraining order.
- You are not sure about what you want to do.

If you cannot afford a lawyer. . .

Legal Aid will assist you in getting a lawyer. In Yellowknife go to the Legal Aid Office (first floor of the Courthouse or telephone 873-7450). In a Western Arctic community go to your Native Courtworker.

Legal Aid will provide you with a lawyer if. . .

- You do not have enough money to hire one and
- You need a divorce and a restraining order to protect yourself.

If you can show you have been seriously threatened or beaten

up and your mental and physical health is suffering, Legal Aid will appoint a lawyer to act on your behalf.

In the NWT, if the RCMP do not seem too enthusiastic about your application or your intention to apply for a peace bond you may need to hire a private lawyer as the Crown Prosecutors will likely not get involved.

Legal Aid is not free. You will be asked to sign a note agreeing to pay back a certain amount of money when you can. It is much less expensive than getting your own lawyer and you don't have to pay the money back right away.

If you *can* afford a lawyer. . .

Finding a lawyer:

The larger communities have at least one firm of lawyers. To choose a lawyer you can a) ask advice from friends or people in the community who have used a lawyer, b) choose a name from the list in the phone book, c) ask your Courtworker for several names to choose from (s/he can't refer you to just one).

When you have a lawyer's name, phone more than one if at all possible and ask these questions:

- About how much will this cost?
- When will I have to pay?
- Do you do Family and Criminal law?
- Have you done many cases like this?
- Will you have my case all the way through?

Do not hire a lawyer you do not feel comfortable about.

Legal Aid in the NWT can assist you with:

- obtaining a Peace Bond if the Crown will not intervene
- obtaining a divorce and, if necessary, a restraining order
- settling issues such as custody and maintenance if you are in a common-law situation or are married, but do not want or cannot get a divorce

Legal Aid will set up an appointment for you with a lawyer who will interview you. The lawyer will indicate to Legal Aid whether legal action is recommended. If it is, Legal Aid usually gives the lawyer approval to continue with that action.

What is the NWT Native Court Workers Association?

The NWT Native Court Workers Association is an organization set up to provide a counselling and referral service for Dene and Metis who have legal problems. They can also give you information and advice about your legal rights.

The Native Court Workers can assist you with:

- “laying an information” at the RCMP station
- attending court if you have to get a restraining order
- understanding the court procedures and the legal words involved in settling your case
- a referral to lawyers, social workers or others you may need

Important numbers for legal help:

NWT Native Court Workers

Head Office: (Basement of Northway Building)

4916 - 49 Street

P.O. Box 2706

Yellowknife, N.W.T.

X1A 2R1

Telephone: 873-3678; 873-6571; 920-2822

Field Workers:

Yellowknife and North Slave: (Ft. Rae, Edzo, Rae Lakes, Lac La Martre)

- Maurice Evans
- Bertha Blondin
- Marie Jerome

Telephone: 873-3751

South Slave: (Fort Smith, Hay River, Pine Point, Fort Resolution)

- Helen Hudson McDonald,
P.O. Box 1119, Fort Smith
Telephone: 872-2759
- Shirley LaMalice,
P.O. Box 1036/181, Hay River, NWT
Telephone: 874-2475; 874-2316

Mackenzie Liard: (Fort Simpson, Jean Marie, Wrigley,
Trout Lake, Ft. Liard)

- Violet Hardisty,
P.O. Box 331, Fort Simpson, NWT
Telephone: 695-3117

Fort Providence:

- Harriet Geddes,
General Delivery, Fort Providence, NWT
Telephone: 699-3581

North Mackenzie: (Fort Good Hope, Colville Lake)

- Alphonsine McNeely,
General Delivery, Fort Good Hope, NWT
Telephone: 598-2208; 598-2376

Delta: (Inuvik, Arctic Red River, Aklavik, Fort McPherson)

- Nadia Inglangasuk,
• Eileen Louie,
P.O. Box 1755, Inuvik, NWT.
Telephone: 979-2030

Coppermine:

- Connie McCrae,
General Delivery, Coppermine, NWT

Cambridge Bay: (Cambridge Bay, Spence Bay, Gjoa Haven,
Bathurst Inlet)

- Harry Aknavigak,
c/o Settlement Office, Cambridge Bay, NWT
Telephone: 983-2469

Norman Wells: (Norman Wells, Fort Norman,
Fort Franklin)

- Ruby McDonald,
P.O. Box 122, Norman Wells, NWT, X0E 0V0
Telephone: 587-2130

Legal Aid

P.O. Box 1320
Yellowknife, NWT
Phone: 873-7450

How can I stop him from beating me?

Scream for help

Try to get out of the house, scream, yell, go to a neighbor's (witnesses are helpful). Beating you is assault. Assault is against the law. If you want him arrested, call the police.

Save evidence

Go to the nursing station, hospital or your doctor immediately so that medical evidence can be collected. Tell your doctor or the nurse *how* you were hurt. Have pictures taken of your injuries. The police will do this *if asked*, especially if a charge of assault is being considered. Pictures can also be taken by a friend or neighbor if that person is willing to go to court as a witness later.

Save torn or bloody clothing for evidence.

Use the law

There are three ways you can use the law:

- charge him with the crime of assault
- ask the court for a "peace bond" (or ask the Justice of the Peace)
- ask for a restraining order

How to charge him with assault

"Lay an information"

The police can do this when they come to your home. If they won't you can do it yourself. You must go to the RCMP station and swear that you have been assaulted. You must tell the story yourself. This can be scary; you can take a friend or relative or courtworker with you.

Should I lay a charge?

It's up to you. If you decide to lay a charge you should be ready to follow through with it. It will take time. You will have to go to court and tell what happened. Your husband or boyfriend may try to talk you into dropping the charges. The judge may only give him a fine.

Don't lay a charge unless you want to, but if you do, stick with it. You have the right to use the law to protect yourself.

What happens in court?

After you lay a charge it goes to the crown prosecutor. The prosecutor handles the case and you are the witness.

If the man pleads guilty there will be no trial. The judge sentences him; usually he just gets a fine, but he could go to jail.

If he pleads not guilty? A court date is set and the man will have to appear before a judge to plead "guilty" or "not guilty". The first appearance in court will be two to three weeks after the charge is laid. If the man pleads "not guilty" a trial date is set. It may be as long as three to four months later. The trial is to allow the man to defend himself against the charge. He will probably hire a lawyer to advise him what to do. Your part in the trial will be to give evidence of his behavior — his beating or threatening you.

You will be a witness for the prosecution. It will be helpful if you:

- save evidence (clothing or photographs)
- have other witnesses (neighbors, friends, relatives)
- have a nurse or doctor who treated your injuries

Be ready to tell your story in court. Practice in front of friends if you feel too nervous or shy. You will be asked questions by the prosecutor. Answer in detail in a clear voice. When the judge or the man's lawyer asks you questions answer clearly and briefly.

You will make a better impression if you are always on time, polite and prepared. You may be upset by what is going on. Don't be ashamed if you cry.

At the end of the trial the judge will decide whether the man is guilty or not guilty. If he is found not guilty he is free to go.

Will he go to jail?

If he is found guilty it is unlikely that he will go to jail. If he has a long record of violent crime the judge may send him to jail. Usually the man will be fined.

The things a judge may look at in making his decision:

- whether you are still living together
- whether he supports any children
- how badly you were beaten

What is a “Peace Bond”?

A Peace Bond is a promise the man makes in court or in front of a Justice of the Peace to “be of good behavior and keep the peace.” This means that he promises not to beat you. It does not mean he has to stay away from you unless that is made a condition.

If he breaks his promise he can be fined.

How do you get a Peace Bond?

To get a Peace Bond, an “information” (complaint) must be laid. The RCMP can do this when they come to your house or you can do it yourself. Go to the RCMP and swear out an information in front of a Justice of the Peace. You don’t need a lawyer to do this, but a friend along for moral support could make it less frightening.

What is a “Restraining Order”?

A Restraining Order is an order by a Supreme Court Judge demanding that a man stay away from his wife to protect her safety.

How do you get a Restraining Order?

To get a Restraining Order a *married* woman swears an affidavit and appears in front of a Supreme Court Judge who makes a decision. A lawyer is usually necessary.

What are the differences between a Peace Bond and Restraining Order?

Peace Bond

- can be obtained to protect you from anyone, includes *common-law* husband, boyfriend, brother, father, legal husband (anyone)
- any *Justice of the Peace* in a community can give a Peace Bond
- a Peace Bond can be ordered to keep the man away for up to *12 months*.
- a lawyer is *not* necessary to get a Peace Bond

Restraining Order

- available only to *legally married* women
- must be a *Supreme Court Judge* in a courtroom
- a Restraining Order is usually given for up to *3 months*
- a lawyer is *usually* necessary to get a Restraining Order

Other advantages to a Peace Bond

Terms: the Justice of the Peace can include in the Peace Bond terms such as the man must go to AA or must stay away from you.

“Sureties”: the Justice of the Peace can order that the man get “sureties”. These are other persons who promise to pay money to the court if the man breaks his promise.

What happens if the man breaks the Peace Bond or Restraining Order?

The man can be put in jail if he “breaks the bond”. Usually though, he gets a fine. Often the fine is so small that it is not enough to keep the man away from you.

Will the RCMP help you?

You or a friend or neighbor should call the RCMP during or after a beating if you want the man who beat you arrested. It's no good calling if you don't want him arrested.

When the RCMP come they will ask questions and if they think it is serious enough they will arrest the man.

If the RCMP will not arrest him, but you think it is serious enough, you can “lay an information” (file a complaint) yourself at the RCMP Station. This could be for a charge of assault or a Peace Bond.

You will get more help from the RCMP if you are willing to follow through on the charge. RCMP Officers complain that women often drop the charge the next day and this makes their job more difficult.

You can expect more help from the RCMP when:

- a friend, neighbor, nurse, social worker, doctor or court-worker complains or backs up your complaint
- you identify your attacker as “a man” rather than “my

husband”, “my boyfriend”

- there is a restraining order, Peace Bond or probation in effect

What happens with my children?

“Custody” is a legal word used when two parents live separately.

“To have custody” of a child means a person has the legal right to look after a child and will decide how the child will be raised and educated.

Kinds of custody

- The most common form of custody allows for one parent to have custody and the other parent is given “reasonable access” to visit.
- Sometimes it is possible for the court to give custody to one parent with no visiting rights for the other parent. This would only be done if the court felt it would be bad for the child to see the other parent. Usually a doctor or mental health worker’s report is needed as proof.
- Custody can also be divided with each parent having the child for part of each year.

Do I have the right to custody?

- If you are *legally married* . . .
You and your husband have equal rights to the children.
This can be changed in two ways:
 - you and your husband sign an agreement giving custody to one parent or
 - one of you goes to court and the court gives custody to one parent
- If you are living *common-law* . . .
If you are not legally married you have the strongest legal claim to your children. The father can go to court and ask for custody, but this is unusual.

What is a custody agreement?

If you are married and separate from your husband you can agree between yourselves which of you will have the children.

This is called a “custody agreement” and can be part of a “separation agreement” which is described later on in this handout.

Custody is never permanent. You or your husband have the right to go to court and ask for a change in the custody agreement.

What if we cannot agree on custody?

When you decide to live apart and can't agree on who will have the children, custody can be decided by the courts. You can apply for an order to give you custody.

The Native Courtworker, Social Worker or a Family Counsellor attached to the NWT Court can help you make this application and tell you whether you need a lawyer.

It can take several months before custody is settled, so you may want to apply to the court for an “interim order”. This is temporary custody until final custody is settled.

How does the court decide who will get custody?

The judge's main concern will be to do what is best for the child. The judge will look at:

- how the parents act and live (child neglect or abuse, alcoholism)
- income (not who makes the most money but who can provide for a stable future)
- what the parents want
- future plans of the parents

Each case is decided on an individual basis. The child's wishes can make a big difference, especially if the child is older. After the age of 13 or 14 what the child wants can make a very big difference.

Is the custody permanent?

The court has the right to change a custody order. However, it will do so only if the parent applying can show that the original order is no longer what is best for the child.

If you get a custody order while you are separated and then later get divorced, the court will probably not change the order.

What is "Access"?

"Access" is the right to visit the children. It is usually given to the parent who does not have custody.

It is based on the idea that the child has the right to see both you and the father.

If you have custody it does *not* mean you have to live in the same community as the father. You are free to go anywhere you want with your children. However, you must allow the visits agreed on in custody agreement.

You can't refuse to let the father see the child to force him to pay maintenance, perform favors, etc.

The custody orders will give the times and length of visits and sometimes includes conditions such as the father must be sober.

What if my husband "steals" the children?

If you have custody. . .

Sometimes the father will come to where the children are staying and take them away or will not return them after a visit.

This is against the law if you have legal custody of a child under 14 years old. It is a serious offence and the father could be jailed for up to ten years if he is found guilty.

If the father claims he had your permission to take the children or that he took them to protect them, he can still be charged. If he can prove that you gave permission that is a good defence. If he can prove that the children needed his protection, for instance, there is a lot of drinking and fighting in your home or your children are abused or neglected, that is also a good defence.

He cannot defend himself by saying the child asked to be taken away or agreed to be taken away.

If you are worried that he has not or may not return them, call the RCMP right away and call your lawyer if you have one.

This same law says that if you have a custody agreement which says when and how often the father may see the

children you cannot refuse to let him see them. This is against the law and you could be charged and jailed for up to ten years.

If there is no custody order or agreement. . .

If there is no court order or separation agreement giving you custody, then the father is free to take the children even though it may upset you.

If your child has *not* been taken out of the NWT get a lawyer *as soon as possible* to:

- go to court for a custody order using the father's behavior as evidence or
- ask the Department of Social Services to remove your children from their father's care. They can only do this if the children are being neglected. (If you are neglecting or abusing your children the father can go to court to get a custody order or ask the Department of Social Services to step in.)

What if my husband takes the children out of the NWT?

Your husband might try to take the children out of the NWT. If you are worried this might be happening *go to the RCMP or your lawyer right away*. This is a very serious problem because NWT Courts do not have the power to act outside of NWT boundaries. You are in a better position if you have a custody order. You may be able to get it registered in the province your children were taken to. The law in this area is very complicated so get legal help immediately if your children are being taken out of the Northwest Territories.

Ending the relationship

Taking your husband to criminal court is only one way to stop him from beating you. You may decide you want to end the relationship permanently (divorce) or temporarily (separation).

If you are living common-law you are both free to leave anytime. You, as the mother, have the right to take your children with you.

Married people can also live separately — this is not illegal, this is a *legal separation*.

Problems arise if you have children or property to divide or if

you need money for child support. You may agree on these things now, but later you may wish that you had something in writing to protect your rights. A *separation agreement* or *contract* may prevent these problems.

What is a separation agreement?

If you and your husband want to separate, you can write down how things are to be divided. This is called a separation agreement. No one can force you into signing such an agreement if you don't want to.

You can write this agreement yourself or you can have a lawyer help you draft it.

If you do it yourself:

- Make sure you are satisfied with everything in the agreement.
- Have two people witness your signatures and put the date of agreement.

For anything complicated get a lawyer, social worker or counsellor to help you set out the terms. Don't let anyone talk you into accepting terms you don't want. It is still you and your husband making the agreement. You will have to live with it.

Some things usually covered in separation agreements are:

- Custody of children
- Dividing property
- Setting child support (maintenance) payments
- Paying off debts
- That you and your husband are going to live separately and will leave each other alone.

What is a "judicial separation"?

Getting a 'judicial separation' from the courts is almost as complicated as getting a divorce and just as expensive. You would only want a "judicial separation" if there is some religious or other reason that you don't want a divorce. These are not common. If you want one see a lawyer. A judicial separation does not allow you to remarry.

Can I get support?

If you need money, your lawyer can help you get support from your husband while you are waiting for your divorce.

If you are living separately but have not applied for a divorce you can still apply for support.

In both of these situations the judge will look at the circumstances of your marriage. Don't worry about the fact that you have left your husband. If you were beaten by your husband, the judge will understand that this is a good legal reason for leaving.

If you are living common-law, you have no right to any maintenance for yourself. If you need support for children of a common-law marriage you can either apply for social assistance (welfare) or take your common-law husband to court where you may have to prove the children are his if he says they are not. The best way to avoid this problem is to have the father sign a contract when the child is born stating the child is his and he will support it.

Unless the case is unusual the children of a legal marriage will always have the right to support from their father. He is just as responsible for them as you are. You can apply for this whether or not you have started to apply for a divorce. Talk to a Native Courtworker, a social worker or a lawyer and they can help you apply for support.

What are the grounds for divorce?

The rules for getting a divorce are the same everywhere in Canada. Getting a divorce means you are permanently ending your marriage; afterwards you will be able to remarry.

You will likely need a lawyer to do your divorce. There is no legal reason why you cannot do your own, but it takes time and know-how.

If you have been beaten by your husband and cannot afford a lawyer Legal Aid will probably help you. Your lawyer can apply for a restraining order to protect you from further beatings while you are waiting for the divorce.

Make a list of the questions that concern you before you first see a lawyer. Make sure you ask about fees, going to court and anything else you are worried about. Take notes during the

conversation. Do not be shy about asking questions, it is *you* who is doing the hiring.

To get a divorce one of the first things you have to show is that Canada is your permanent home and that you do not plan to leave permanently in the future. You have to show that either you or your husband have “made your home” in the NWT for at least one year before filing for divorce and actually been here for ten months. These are not “grounds” (reasons) for divorce, they just mean that the court in the NWT has the power to hear your petition.

Cruelty

What does “cruelty” mean?

It does not have an exact definition. The judge will look at your marriage and see if what your husband has done makes it *impossible for you to live with him*. Cruelty can be mental or physical.

It will help your case if you can show the judge that your husband has done any of these things:

- beaten you or your children
- made threats to you or your children
- done or said anything to make you or your children fear for your lives or caused you to be sick.

You must have evidence. It is best to have friends, relatives, a nurse or doctor or anyone who has seen your husband be cruel (mean) or has seen the bruises or other proof of his cruelty.

Marriage breakdown

Marriage breakdown means you have been living separate and apart from your husband for either three or five years.

If you and your husband agreed to live separately, either one of you can apply for a divorce after three years. You do not have to show cruelty or adultery — just the fact that you have lived apart.

If one of you left without what is called “just cause” (good reason) the judge may find that person “in desertion” and that person will have to wait five years to apply for a divorce for

that reason. For example, if your husband just takes off for no reason he cannot apply for a divorce before five years.

What is "Desertion"?

If you left your husband because you found it *impossible* to stay, you are probably not "in desertion". Judges understand that sometimes people are forced to leave. You are not necessarily "in desertion" just because you were the one to move out as long as you and your husband decided to split up. Your lawyer can help you with this.

Adultery

Adultery is when a husband or wife has sexual intercourse with someone else outside of the marriage. If you can show that your husband has committed adultery you may be able to get a divorce for this reason. It is best to hire a lawyer to do this, especially if there is any disagreement about property or children.

There are other less common grounds for divorce not included here. You will need legal advice.

Finally...

The information in this handout is to help you understand what legal rights you have. It is not meant to take the place of a lawyer. The law can be used to make things better for you. Sometimes it takes time, sometimes it does not help as much as it should.

If you want things to change you have to make the first move, but there are people who can help you once you start.

Good luck.

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